

IBRAHIM (Migration) [2019] AATA 2438 (8 May 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

REVIEW APPLICANT: Mr Abubakar Ibrahim

VISA APPLICANTS: Ms Fatima Musah
Master Abdul Satar Abubakar

CASE NUMBER: 1722974

DIBP REFERENCE(S): BCC2017/1750001

MEMBER: Helena Claringbold

DATE: 8 May 2019

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the applications for Partner (Provisional) (Class UF) visas for reconsideration, with the direction that the first named visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa:

- cl.309.211 of Schedule 2 to the Regulations; and
- cl.309.221 of Schedule 2 to the Regulations; and
- the secondary visa applicant meets the following criteria;
- cl.309.311 of Schedule 2 to the Regulations; and
- cl.309.321(b)(i) of Schedule 2 to the Regulations.

Statement made on 08 May 2019 at 2:50pm

1. CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Spouse (Provisional) – genuine spousal partners – evidence of financial and social aspects of relationship provided – commitment to shared life together to exclusion of all others – genuine and continuing

relationship – young family – decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), s 5

Migration Regulations 1994 (Cth), r 1.15A, Schedule 2, cls 309.211, 309.221, 309.311, 309.321,

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. On 11 May 2017, Ms Fatima Musah (the visa applicant) applied for a Partner (Provisional) (Class UF) visa. The application was based on her spousal relationship with Mr Abubakar Ibrahim, the sponsor. Master Abdul Satar Abubakar, who is the visa applicant's and the sponsor's son, is the secondary visa applicant.
3. On 22 September 2017, a delegate of the Minister for Immigration and Border Protection refused to grant the visa. The delegate was not satisfied that the visa applicant and the sponsor are genuine spousal partners. Therefore, the visa applicant did not meet cl. 309.211(1) of Schedule 2 to the Migration Regulations 1994 (the Regulations) made under the *Migration Act 1958* (the Act). As a result, the secondary visa applicant did not meet cl.309.321 of the Regulations. On 25 September 2017, the sponsor provided the Tribunal with a copy of the delegate's decision record. This is a review of the delegate's decision brought about by the sponsor.
4. On 7 May 2019, the sponsor appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant. The sponsor was represented in relation to the review by his registered migration agent.
5. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

6. The Tribunal has taken into consideration, individually and as a whole, all the evidence in the Department of Immigration and Border Protection's (the Department's) case file and the Tribunal's case file and the evidence at the Tribunal hearing.

7. ISSUE

8. The issue in the present case is whether the sponsor and the visa applicant are spousal partners as defined by s.5F of the Act.

9. BACKGROUND ON THE EVIDENCE

10. In 1988, the visa applicant was born in Accra, Accra Metropolitan Assembly, Accra, Ghana. Her parents live in Ghana and she has no siblings.
11. In 1977, the sponsor was born in Accra, Ghana. His parents are deceased. In February 2010, the sponsor entered Australia as the holder of a Temporary Work (Entertainment) visa. On 5 February 2011, he married Mrs Josephine Timene Dinah Satrik. In May 2013, the sponsor was granted a permanent partner visa. In the period of 2013 to 2018, the sponsor travelled to Ghana each year for approximately two to three months. On 13 May 2015, Mrs Satrik and the sponsor divorced. There were no children from this marriage.
12. In August 2013, the parties met during a Salah programme in Accra Zongo, Accra, Ghana. In September 2016, the parties married in Accra, Ghana. There are two children from the relationship. The eldest son was born in July 2015. The second son was born in December 2018.

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15. Are the parties validly married?

16. At the time the visa application was made the visa applicant provided evidence of her marriage to the sponsor. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the parties in a spousal relationship?

17. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d).

18. CLAIMS AND FINDINGS

19. In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and sponsors household and their commitment to each other as set out in r.1.15A(3) of the Regulations, which is extracted in the attachment to this decision.
20. Regarding the financial aspects of the parties' relationship, there is no evidence that the parties have any joint ownership of real estate or other major assets or joint liabilities or pooling of financial resources, especially in relation to major financial commitments. The parties are jointly liable for the lease on the accommodation where the visa applicant and the children live. There is no other evidence of financial legal obligations in respect of each other. The sponsor purchased land some years ago and is in the process of building a house. The parties' income is derived from the sponsor's income. The parties have a joint bank account. The sponsor told the Tribunal that he transferred over \$36,000 to the visa applicant and this was primarily used to pay construction costs for the house. He stated that he has spent approximately \$60,000 on the house which he raised from a bank loan and personal savings. The joint bank account is managed by the visa applicant. She pays the household expenses and other expenses for the family and related costs for the building of the house. The Tribunal accepts that the parties share their day-to-day household expenses.
21. Regarding the parties' household, the sponsor considers that he is jointly responsible for the care and support of the children with the visa applicant. The sponsor lives in Australia where he shares accommodation with a friend. The visa applicant and the secondary visa applicant live in Ghana, in the home rented by the sponsor prior to the parties' relationship. When the sponsor is in Ghana he shares the housework, including taking the parties' child to kindergarten. The Tribunal accepts that the parties have joint responsibility for the care and support of their children and share some responsibility for housework.
22. Regarding the social aspects of the parties' relationship, the parties' enjoy simple social activities such as going shopping together or going to the beach or visiting craft shops. In 2014, the parties undertook the Hajj together. They travelled for approximately one month, on this Islamic pilgrimage to Mecca, Saudi Arabia. Third-party statements from two friends of the sponsor in 2017 and 2019 - stated that they met considered the parties' relationship to be genuine and had been with the parties in Ghana. Photographic evidence depicts the parties together and with others at different locations including the marriage registry and during their pilgrimage to Mecca. The Tribunal accepts that the parties represent themselves and are accepted by others as spousal partners. The Tribunal accepts that the parties plan and undertake joint social activities together.

23. Regarding the parties commitment to their relationship, the parties met in 2013. At that time the visa applicant moved into the sponsor's home and they consider their partner relationship to have begun then. Since 2013, the sponsor has travelled to Ghana each year and he lives with the visa applicant for approximately three months on each visit. In 2014, during the parties' travel to Mecca, the visa applicant suffered a miscarriage. In July 2015, the parties' first child was born and the parties' married on 22 September 2016. In December 2018, the parties' second son was born. The parties provided consistent information about the support they provide each other. The Tribunal accepts that the parties' lived together as de facto partners for approximately eight months prior to their marriage. The Tribunal accepts that the parties' lived together for approximately five months as spousal partners. The parties want to live together in Australia with their children. The sponsor will find more generous accommodation where the parties and their children can live together. The visa applicant intends to train in the aged care sector. The Tribunal accepts that the parties provide each other with companionship and emotional support including at the time of the visa applicant's miscarriage and children's births and more generally in their daily lives. The Tribunal accepts that the parties see their relationship as long-term.
24. Although the parties provided some inconsistent information to the Tribunal, the Tribunal balanced this against other consistent evidence and overall, the Tribunal is satisfied that the visa applicant and the sponsor have a mutual commitment to a shared life as husband and wife to the exclusion of all others; that their relationship is genuine and continuing and that they do not live separately and apart on a permanent basis. The visa applicant therefore meets the requirements of s.5F of the Act. Given these findings, the Tribunal is satisfied that the parties are in a spousal relationship.
25. Therefore the visa applicant meets cl.309.211(2) and cl.309.221 of Schedule 2 to the Regulations.
26. At the time of application the secondary visa applicant had not turned 18. At the time of decision the secondary visa applicant continues to be under 18. Therefore, it is accepted that the secondary visa applicant is a dependent child of the visa applicant, as the family head. As the secondary visa applicant made a combined application with the visa applicant who satisfies the primary criteria in cl.309.211(2) and cl.309.221 of Schedule 2 to the Regulations. It follows that, the secondary visa applicant meets cl.309.311 and cl.309.321(b)(i) of Schedule 2 to the Regulations.
27. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 309 visa.

DECISION

28. The Tribunal remits the application for a Partner (Provisional) (Class UF) visa for reconsideration, with the direction that the visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa:
- cl.309.211 of Schedule 2 to the Regulations; and
 - cl.309.221 of Schedule 2 to the Regulations; and
 - the secondary visa applicant meets the following criteria;
 - cl.309.311 of Schedule 2 to the Regulations; and
 - cl.309.321(b)(i) of Schedule 2 to the Regulations.

Helena Claringbold
Member

• **ATTACHMENT - Extract from Migration Regulations 1994**

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).